

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

MAR 31 2009

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS**

JAMES W. McCORMACK, CLERK  
By: \_\_\_\_\_ DEP. CLERK

**THE POULTRY FEDERATION**

**PLAINTIFF**

v.

**CASE NO. 4:09mc007 (MISCELLANEOUS)**

This case assigned to District Judge Moody

and to Magistrate Judge \_\_\_\_\_

**THE STATE OF OKLAHOMA**

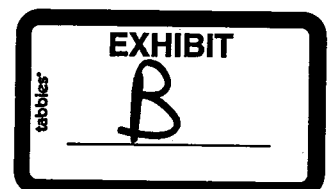
**DEFENDANT**

**THE POULTRY FEDERATION'S MOTION TO QUASH AND MOTION FOR  
PROTECTIVE ORDER.**

For its motion to quash and motion for protective order, The Poultry Federation states as follows:

1. This is a challenge to a third party subpoena.
2. The State of Oklahoma has brought an action against various Poultry Integrators in the Northern District of Oklahoma alleging environmental contamination to the Illinois River Watershed from the application of poultry litter as a result of the poultry feeding. The Poultry Federation is not a party to that action.
3. The State has served The Poultry Federation with a subpoena for a Rule 30(b)(6) deposition to take place on April 14, 2009. See Subpoena, attached hereto as Exhibit 1.
4. The subpoena should be quashed pursuant to Rule 45 or a protective order entered pursuant to Rule 26 for the reasons described in the memorandum of law in support of the motion to dismiss, filed contemporaneously herewith and incorporated herein.

WHEREFORE, for reasons provided in its Memorandum in Support, The Poultry Federation prays for an Order of the Court quashing the Subpoena served by the State of

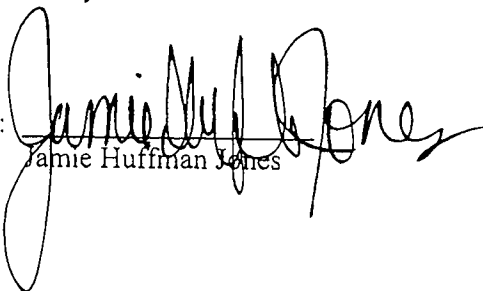


Oklahoma or for a protective order, for its costs and fees, and for such further relief that the Court deems appropriate.

Respectfully submitted,

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Attorneys for Defendant,  
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BY:   
Jamie Huffman Jones

**CERTIFICATE OF SERVICE**

I hereby certify that on this, the 31<sup>st</sup> day of March, 2009, I electronically transmitted an electronic copy of the foregoing pleading to the following individuals via email:

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I hereby certify that on this, the 31<sup>st</sup> day of March, 2009, I electronically transmitted an electronic copy of the foregoing pleading to the following individuals via United States Postal Service:

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AO 88A (Rev. 01/09) Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action

UNITED STATES DISTRICT COURT

for the  
Eastern District of Arkansas

State of Oklahoma  
*Plaintiff*

v.  
Tyson Foods, Inc., et. al.  
*Defendants*

Civil Action No.: 05-CV-329-GFK-PJC  
*Northern District of Oklahoma*

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES

To: The Poultry Federation  
Attn: Marvin Childers  
321 South Victory  
Little Rock, AR 72701

- ☒ **Testimony:** YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See attached Notice of Deposition.

Place: The Poultry Federation 321 South Victory Little Rock, AR 72701	Date and Time: April 14, 2009 at 9:00 a.m.
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The deposition will be recorded by this method: Court Reporter.

- ☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 03/13/09

CLERK OF COURT

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

OR Elizabeth C. Ward  
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing State of Oklahoma, who issues or requests this subpoena, is: Elizabeth C. Ward, Motley Rice, LLC, 28 Bridgeside Boulevard, Mount Pleasant, SC, (843) 216-9280, eward@motleyrice.com.





AO 88B (Rev. 01/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for (name of individual and title, if any) \_\_\_\_\_  
 was received by me on (date) \_\_\_\_\_.

☐ I personally served the subpoena on the individual at (place) \_\_\_\_\_  
 on (date) \_\_\_\_\_; or

☐ I left the subpoena at the individual's residence or usual place of abode with (name) \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on (date) \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the subpoena to (name of individual) \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of (name of organization) \_\_\_\_\_  
 on (date) \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because \_\_\_\_\_; or

☐ other (specify): \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 05-cv-329-GKF(PJC)  
 )  
 TYSON FOODS, INC., et al., )  
 )  
 Defendants. )

**NOTICE OF DEPOSITION**  
**OF THE POULTRY FEDERATION**

Please take notice that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, the deposition of The Poultry Federation, by and through its duly designated representative(s), shall be taken by the State of Oklahoma at 9:00 a.m. on April 14, 2009, at the offices of The Poultry Federation, 321 South Victory, Little Rock, AR 72701, before a qualified court reporter, such examination to continue by adjournment, if necessary, until the same is completed, on those matters set forth in the attached Exhibit A.

Respectfully Submitted,

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**EXHIBIT "A"**

**A. DEFINITIONS AND INSTRUCTIONS**

1. When used herein "Poultry Integrators" means:

Cargill Inc., (including acquired company Rocco Farms, Inc.)  
Cargill Turkey Production LLC  
Cal-Maine Farms, Inc.  
Cal-Maine Foods, Inc.  
Cobb-Vantress, Inc.  
George's, Inc.  
George's Farms, Inc.  
Peterson Farms, Inc.  
Simmons Foods, Inc.  
Tyson Chicken, Inc.  
Tyson Food, Inc. (Including acquired company Hudson Foods, Inc.)  
Tyson Poultry Inc.  
Willow Brook Foods, Inc.

including any affiliate or subsidiary and any owner, officer, director, employee of the named Poultry Integrators.

2. The term "you" means the U.S. Poultry and Egg Association as well as any of its officers, executives, directors, agents, servants, employees and other persons or entities acting or purporting to act on its behalf.

3. The connectives "and" and "or" are to be construed either disjunctively or conjunctively as necessary to bring within the scope of this subpoena all information and materials that might otherwise be construed to be outside of its scope.

4. The term "any" includes "all" and "each;" the term "all" includes "any" and "each;" and the term "each" includes "any" and "all."

5. References to the singular are to be construed to include the plural and vice versa.

6. As used herein, "poultry waste" means poultry excrement, bedding material, feed wastes and any other waste associated with the confinement of poultry in a grow house which is removed periodically from the grow house and used or disposed of elsewhere, also commonly referred to as poultry litter.

**B. AREAS OF INQUIRY**

- 1 Membership or affiliation records of the Poultry Integrators with the Poultry Federation from 1980 to present.

2. Any discussions, meetings, studies, projects, events, programs, surveys and/or research conducted by the Poultry Federation, or under its supervision, regarding the handling, use, transport and disposition of poultry waste or poultry litter.

3. Poultry Integrators' participation in or sponsorship of any discussions, meetings, studies, projects, events, programs, surveys and/or research conducted by the Poultry Federation, or under its supervision, regarding the handling, use, transport and disposition of poultry waste or poultry litter.

4. Any discussions, meetings, projects, events, programs, surveys and/or research conducted by Poultry Federation or under its supervision regarding the effects on water quality from the handling, use, transport and disposition of poultry waste or poultry litter.

5. Poultry Integrators' participation in or sponsorship of any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on water quality from the handling, use, transport and disposition of poultry waste or poultry litter.

6. Any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on human health from the handling, use, transport and disposition of poultry waste or poultry litter.

7. Poultry Integrators' participation in or sponsorship of any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on human health from the handling, use, transport and disposition of poultry waste or poultry litter.

8. Any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on the environment from the handling, use, transport and disposition of poultry waste or poultry litter.

9. Poultry Integrators' participation in or sponsorship of any discussions, meetings, projects, events, programs, surveys, and/or research conducted by the Poultry Federation or under its supervision regarding the effects on the environment from the handling, use, transport and disposition of poultry waste or poultry litter.

10. Any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on water quality in the Illinois River Watershed (located in Oklahoma and Arkansas) from the handling, use, transport and disposition of poultry waste or poultry litter.

11. Poultry Integrators' participation in or sponsorship of any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on water quality in the Illinois River Watershed (located in Oklahoma and Arkansas) from the handling, use, transport and disposition of poultry waste or poultry litter.

12. Any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on human health in the Illinois River Watershed (located in Oklahoma and Arkansas) from the handling, use, transport and disposition of poultry waste or poultry litter.
13. Poultry Integrators' participation in or sponsorship of any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on human health in the Illinois River Watershed (located in Oklahoma and Arkansas) from the handling, use, transport and disposition of poultry waste or poultry litter.
14. Any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on the environment in the Illinois River Watershed (located in Oklahoma and Arkansas) from the handling, use, transport and disposition of poultry waste or poultry litter.
15. Poultry Integrators' participation in or sponsorship of any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on the environment in the Illinois River Watershed (located in Oklahoma and Arkansas) from the handling, use, transport and disposition of poultry waste or poultry litter.
16. Poultry Integrators' participation in the governance of the affairs, organization activities and policies of the Poultry Federation.
17. The nature and extent of records of or discussions, meetings, research, surveys and/or reports about and any action taken regarding the issue of the ownership or responsibility of poultry waste produced by Poultry Integrators' poultry.
18. Lobbying efforts of the Poultry Federation in the States of Oklahoma and Arkansas with respect to environmental or agricultural legislation related to poultry waste.
19. Lobbying efforts of the Poultry Federation with respect to federal environmental or agricultural legislation related to poultry waste.
20. The creation, editing and dissemination of the "Poultry Water Quality Handbook" (all editions), and the identities of the individuals who participated in the creation of and revisions of this document.
21. The creation and organization of the "National Poultry Waste Symposium" for 1988 to present including the papers, reports and presentations included therein and the identities of the individuals who organize and participate in the Symposium.
22. The distribution, dissemination, and publication of data created, received, assembled, prepared, accumulated by the Poultry Federation regarding the handling, use, transport and disposition of poultry waste or poultry litter.

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I further certify that on this, the 13<sup>th</sup> day of March, 2009, I mailed a copy of a *Subpoena and Notice of Deposition of The Poultry Federation* to the following individuals via the United States Postal Service:

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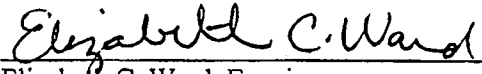
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**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

MAR 31 2009

THE POULTRY FEDERATION

PLAINTIFF

JAMES W. McCORMACK, CLERK

By: \_\_\_\_\_ DEP CLERK

v.

CASE NO. 4:09mc007 (MISCELLANEOUS)

THE STATE OF OKLAHOMA

DEFENDANT

**MEMORANDUM OF LAW IN SUPPORT OF THE POULTRY FEDERATION'S  
MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER.**

**I. INTRODUCTION.**

The State of Oklahoma has brought an action against various Poultry Integrators in the Northern District of Oklahoma alleging environmental contamination to the Illinois River Watershed from the application of poultry litter as a result of the poultry feeding.<sup>1</sup> The Poultry Federation is not a party to that action; however, several of its members are parties. The State first served a subpoena *duces tecum* on The Poultry Federation, requesting in essence all documents of The Poultry Federation since its existence. The Poultry Federation responded by objecting to the subpoena *duces tecum* on various grounds, including that Federal Rule of Civil Procedure 45(c)(1) was violated by the subpoena in that responding would require a search of every document in the possession of The Poultry Federation and with less than fifteen days to complete the task. Subject to the objections, The Poultry Federation set out to work with the State and ultimately invited the State's counsel to view approximately 80 boxes of documents from which over 8500 pages were pulled for production. The State has now served The Poultry

<sup>1</sup> The case number is 05-CV-329 GKF (SAJ). A description of the allegations may be found at 2008 U.S. Dist. LEXIS 91390 (Sept. 29, 2008).

Federation with a subpoena for a Rule 30(b)(6) deposition to take place on April 14, 2009.<sup>2</sup> Again, this subpoena requests testimony to the beginning of organization's existence. The vast majority of the areas of inquiry lack any time, scope, or geography limitation. The Poultry Federation has indicated that it would work with the State on these issues, but to date, no agreement has been reached.

**II. THE AREAS OF INQUIRY SHOULD BE LIMITED IN TIME, SCOPE, AND GEOGRAPHY. AS STATED, THE AREAS OF INQUIRY ARE OVERLY BROAD AND UNDULY BURDENSOME.**

Federal Rule 45 governs subpoenas, and it states that a nonparty served with a subpoena may make objections before the earlier of the time specified for compliance or 14 days after service. Fed.R.Civ.P. 45(c) (2) (B). If an objection is made, the court's order "must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance." Fed.R.Civ.P. 45(c) (2) (B) (ii). "On timely motion, the issuing court must quash or modify a subpoena that: . . . subjects a person to undue burden." Fed.R.Civ.P. 45(c)(3)(A)(iv). "Under Rule 45(c)(3)(A), '[a]n evaluation of undue burden requires the court to weigh the burden to the subpoenaed party against the value of the information to the serving party . . . including consideration of 'such factors as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed.'" *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 (C.D. Cal. 2005) (citations omitted). The court's power to quash or modify subpoenas based on undue burden extends to non-parties. *Truswal Systems Corp., v. Hydro-Air Eng'g, Inc.*, 813 F.2d 1207, 1209-10 (Fed.Cir. Mo. 1987).

<sup>2</sup> The definitions and instructions of the subpoena defines "you" to mean the "U.S. Poultry and Egg Association." The Poultry Federation assumes that this was a typographical error and that it should have defined "you" to mean "The Poultry Federation" and will read the subpoena as such. However, to the extent this was not a typographical

Rule 26 further provides that the court “may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. . . .” Pursuant to Rule 26, the Court may forbid the disclosure or discovery, forbid the inquiry into certain matters, and limit the scope of disclosure or discovery to certain matters. Thus, it is clear from the Federal Rules of Civil Procedure, that a non-party subpoena must not be overly broad and unduly burdensome and, in the event that it is, the Court may protect the non-party from the burden and expense either through a protective order under Rule 26 or an order to quash under Rule 45. This is a case requiring protection.

*A. The areas of inquiry are improper.*

The Poultry Federation should be protected from the subpoena at issue. The areas of inquiry contained in the subpoena are almost all overly broad and many are areas of which The Poultry Federation lacks knowledge.

First, the subpoena lists 22 areas of inquiry and includes in essence almost everything and anything to do with The Poultry Federation since its inception. The areas of inquiry, as set out and explained below, are the definition of over breadth. A Rule 30(b)(6) subpoena must “describe with reasonable particularity the matters on which examination is requested.” FRCP 30(b)(6). The reason, of course, for the reasonable particularity requirement is that once served with a proper Rule 30(b)(6) notice, an organization has a duty to designate and prepare an appropriate witness. *See e.g. United States v. Taylor*, 166 F.R.D. 356, 361 (D.N.C. 1996) (describing the duties under Rule 30(b)(6)). The requirement thus serves “to avoid the difficulties encountered by both sides when the party to be examined is unable to determine who within the corporation would be best able to provide the information sought.” *Innomed Labs, LLC v. Alza*

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error, The Poultry Federation objects to the definition.

*Corp.*, 211 F.R.D. 237, 240 (S.D.N.Y. 2002). Inherent in the requirement of reasonable particularity is that it must be specific and not overly broad so that the organization may properly designate and prepare its witness. In almost all the instances, the area of inquiry is overly broad. There are few, if any, time limitations, geography limitations, or scope limitations.

Second, an organization is required to designate a witness to testify only to areas within the organization's knowledge or reasonable available to the organization. Many of the areas of inquiry call for information not within the knowledge of or reasonably available to The Poultry Federation.

Third, while The Poultry Federation recognizes that Rule 30 places a duty upon it to designate an individual to testify to properly set out categories, and to educate this designee if required, the limitless time categories put an undue and unreasonable burden to locate and educate a designee (or even designees) on almost anything and everything occurring at The Poultry Federation since inception. At some point, there is a loss of institutional memory that cannot be retrieved. The Middle District of North Carolina has explained:

An individual's personal memory is no more extensive than his or her life. However, a corporation has a life beyond that of mortals. Moreover, it can discharge its "memory," *i.e.* employees, and they can voluntarily separate themselves from the corporation. Consequently, it is not uncommon to have a situation, as in the instant case, where a corporation indicates that it no longer employs individuals who have memory of a distant event or that such individuals are deceased. *See Dravo Corp.*, 164 F.R.D. 70, 75; *U.S. v. Massachusetts Indus. Finance Agency*, 162 F.R.D. at 412. These problems do not relieve a corporation from preparing its Rule 30(b)(6) designee to the extent matters are reasonably available, whether from documents, past employees, or other sources. *Ierardi v. Lorillard, Inc.*, *supra*. Of course, just like in the instance of an individual deponent, the corporation may plead lack of memory.

*United States v. Taylor*, 166 F.R.D. 356, 361 (1996).

The Poultry Federation was founded in 1954. The current President, Marvin Childers, assumed his post in January of 2007 . Mr. Childers is the likely designee to the subpoena. While it may be possible to educate Mr. Childers on the documents produced to the State and any documents which are in the possession of The Poultry Federation, for many of the areas of inquiry, all Mr. Childers could possibly do is refer to the documents. In many of the areas of inquiry, the State calls for testimony regarding meetings or discussions of which Mr. Childers—and indeed no one currently at The Poultry Federation—could not have any knowledge. There is, thus, in many cases a lack of institutional knowledge despite the best of preparations.

Each area of inquiry is discussed separately below:

1. *Membership or affiliation records of the Poultry Integrators with the Poultry Federation from 1980 to present.*

This area of inquiry is overly broad in that it requires a designee for a twenty-nine year time period. The Poultry Federation has produced its records on this matter and these documents should speak for themselves. If there is any particular document that the State needs authenticated, The Poultry Federation would have no objection to such a line of inquiry. However, to require a designee to discuss membership for a twenty-nine year time period is unreasonable.

2. *Any discussions, meetings, studies, projects, events, programs, surveys and/or research conducted by the Poultry Federation, or under its supervision, regarding the handling, use, transport and disposition of poultry waste or poultry litter.*

This interrogatory is objectionable because it is overly broad in that it would require a designee to be prepared to discuss any and everything to do with waste, litter or manure without regards to subject matter limitations, geographical limitations, or time limitations. Further, it



requests all discussions and meetings “regarding the handling, use, transport and disposition of poultry waste or poultry litter” from the inception of The Poultry Federation. Even with the best of preparation, it would not be possible for a designee to know all discussions and meetings which had taken place in the life of the organization; this is an example where there is a loss of institutional memory. It is further objectionable because it is unduly burdensome, particularly in light of the time constraints, and is not reasonably calculated to lead to the discovery of admissible information.

3. *Poultry Integrators' participation in or sponsorship of any discussions, meetings, studies, projects, events, programs, surveys and/or research conducted by the Poultry Federation, or under its supervision, regarding the handling, use, transport and disposition of poultry waste or poultry litter.*

The Poultry Federation refers to and incorporates herein its objections to area of inquiry

No. 2.

4. *Any discussions, meetings, projects, events, programs, surveys and/or research conducted by Poultry Federation or under its supervision regarding the effects on water quality from the handling, use, transport and disposition of poultry waste or poultry litter.*

The Poultry Federation refers to and incorporates herein its objections to area of inquiry

No. 2.

5. *Poultry Integrators' participation in or sponsorship of any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on water quality from the handling, use, transport and disposition of poultry waste or poultry litter.*

The Poultry Federation refers to and incorporates herein its objections to area of inquiry

No. 2.

6. *Any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on human health from the handling, use, transport and disposition of poultry waste or poultry litter.*

The Poultry Federation refers to and incorporates herein its objections to area of inquiry No. 2.

7. *Poultry Integrators' participation in or sponsorship of any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on human health from the handling, use, transport and disposition of poultry waste or poultry litter.*

The Poultry Federation refers to and incorporates herein its objections to area of inquiry No. 2.

8. *Any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on the environment from the handling, use, transport and disposition of poultry waste or poultry litter.*

The Poultry Federation refers to and incorporates herein its objections to area of inquiry No. 2.

9. *Poultry Integrators' participation in or sponsorship of any discussions, meetings, projects, events, programs, surveys, and/or research conducted by the Poultry Federation or under its supervision regarding the effects on the environment from the handling, use, transport and disposition of poultry waste or poultry litter.*

The Poultry Federation refers to and incorporates herein its objections to area of inquiry No. 2.

10. *Any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on water quality in the Illinois River Watershed (located in Oklahoma and Arkansas) from the handling, use, transport and disposition of poultry waste or poultry litter.*

This interrogatory is objectionable because it is overly broad in that it would require a designee to be prepared to discuss any and everything to do with waste, litter or manure without regards to time limitations. Further, it requests all discussions and meetings “regarding the handling, use, transport and disposition of poultry waste or poultry litter” from the inception of The Poultry Federation. Again, even with the best of preparation, it would not be possible for a designee to know all discussions and meetings on the subjects which had taken place in the life of the organization; this is yet another example where there is a loss of institutional memory. It is

further objectionable because it is unduly burdensome, particularly in light of the time constraints, and is not reasonably calculated to lead to the discovery of admissible information.

11. *Poultry Integrators' participation in or sponsorship of any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on water quality in the Illinois River Watershed (located in Oklahoma and Arkansas) from the handling, use, transport and disposition of poultry waste or poultry litter.*

The Poultry Federation refers to and incorporates herein its objections to area of inquiry  
No. 10.

12. *Any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on human health in the Illinois River Watershed (located in Oklahoma and Arkansas) from the handling, use, transport and disposition of poultry waste or poultry litter.*

The Poultry Federation refers to and incorporates herein its objections to area of inquiry  
No. 10.

13. *Poultry Integrators' participation in or sponsorship of any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on human health in the Illinois River Watershed (located in Oklahoma and Arkansas) from the handling, use, transport and disposition of poultry waste or poultry litter.*

The Poultry Federation refers to and incorporates herein its objections to area of inquiry  
No. 10.

14. *Any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on the environment in the Illinois River Watershed (located in Oklahoma and Arkansas) from the handling, use, transport and disposition of poultry waste or poultry litter.*

The Poultry Federation refers to and incorporates herein its objections to area of inquiry  
No. 10.

15. *Poultry Integrators' participation in or sponsorship of any discussions, meetings, projects, events, programs, surveys and/or research conducted by the Poultry Federation or under its supervision regarding the effects on the environment in the Illinois River Watershed (located in Oklahoma and Arkansas) from the handling, use, transport and disposition of poultry waste or poultry litter.*

The Poultry Federation refers to and incorporates herein its objections to area of inquiry No. 10.

16. *Poultry Integrators' participation in the governance of the affairs, organization activities and policies of the Poultry Federation.*

This interrogatory is objectionable because it is overly broad in that it would require a designee to be prepared to discuss any and everything to do with The Poultry Federation. Terms such as “governance of the affairs, organization activities and policies” are so broad that it prevents any reasonable preparation for a deposition. It is further objectionable because it is unduly burdensome, particularly in light of the time constraints, and is not reasonably calculated to lead to the discovery of admissible information.

17. *The nature and extent of records of or discussions, meetings, research, surveys and/or reports about and any action taken regarding the issue of the ownership or responsibility of poultry waste produced by Poultry Integrators' poultry.*

This interrogatory is objectionable because it is overly broad in that it would require a designee to be prepared to discuss any and everything to do with waste, litter or manure without regards to subject matter limitations, geographical limitations, or time limitations. Further, it requests all discussions and meetings “regarding the issue of the ownership or responsibility of poultry waste produced by Poultry Integrators' poultry” from the inception of The Poultry Federation. While The Poultry Federation would do its utmost to prepare a designee for this area of inquiry, it would not be possible to know all discussions and meetings which had taken place

in the life of the organization; this is an example where there is a loss of institutional memory. It is further objectionable because it is unduly burdensome, particularly in light of the time constraints, and is not reasonably calculated to lead to the discovery of admissible information. Moreover, the subject matter attempted, that is "the issue of the ownership or responsibility of poultry waste produced by Poultry Integrators' poultry" is vague and ambiguous and would prevent adequate preparation.

18. *Lobbying efforts of the Poultry Federation in the States of Oklahoma and Arkansas with respect to environmental or agricultural legislation related to poultry waste.*

This interrogatory is objectionable because it is overly broad in that it would require a designee to be prepared to discuss any and everything to do with poultry waste without regards to subject matter limitations, geographical limitations, or time limitations. Again, despite the best of preparations, it would not be possible to know all such activities which had taken place in the life of the organization; there is a loss of institutional memory. It is further objectionable because it is unduly burdensome, particularly in light of the time constraints, and is not reasonably calculated to lead to the discovery of admissible information.

19. *Lobbying efforts of the Poultry Federation with respect to federal environmental or agricultural legislation related to poultry waste.*

The Poultry Federation refers to and incorporates herein its objections to area of inquiry No. 18.

20. *The creation, editing and dissemination of the "Poultry Water Quality Handbook" (all editions), and the identities of the individuals who participated in the creation of and revisions of this document.*

This document was not created, edited or disseminated by The Poultry Federation. It appears this document is the product of the U.S. Poultry and Egg Association. As noted

elsewhere in this memorandum, the definitions of the subpoena erroneously define "you" as the "U.S. Poultry and Egg Association." It may then be that this area of inquiry is also in error. Regardless, The Poultry Federation would not have knowledge or reasonable access to the information requested in this area of inquiry.

21. *The creation and organization of the "National Poultry Waste Symposium" for 1988 to present including the papers, reports and presentations included therein and the identities of the individuals who organize and participate in the Symposium.*

This interrogatory is objectionable because it is overly broad in that it would require a designee to be prepared to discuss any and everything to do with the symposium without regards to subject matter limitations or reasonable time limitations. It is unreasonable to require The Poultry Federation to identify all requested information for every symposium since 1988 and to prepare a designee to testify. Further, as has been previously told to the State, the symposium is conducted in conjunction with the University of Arkansas and the University has many of the records. These records are not in the control of The Poultry Federation and a witness could not be prepared on the records.

22. *The distribution, dissemination, and publication of data created, received, assembled, prepared, accumulated by the Poultry Federation regarding the handling, use, transport and disposition of poultry waste or poultry litter.*

The Poultry Federation refers to and incorporates herein its objections to area of inquiry No. 2.

***B. The notice is unreasonable.***

In addition to the failings described above, the time period is not reasonable in this situation. The Poultry Federation was served on or around March 17, 2009 for a deposition to

occur on April 14, 2009.<sup>3</sup> While a month might normally be enough notice for a Rule 30(b) (6) deposition, in this case, it is unreasonable due to the burden placed on The Poultry Federation.

Further, the date the deposition (April 14) is during the last week of the State of Arkansas General Assembly's legislative session, which is one of the busiest times for The Poultry Federation. The likely designee of this subpoena would be Marvin Childers, the President of the Poultry Federation and its chief lobbyist. In order to be properly prepared and educated for the deposition, Mr. Childers would be required to effectively stop doing a large portion of his job. This would be patently unreasonable. The deposition should be set after the close of the legislative session and with enough time to properly educate and prepare Mr. Childers.

#### IV. CONCLUSION.

For the foregoing reasons, the subpoena should be quashed, or in the alternative, a protective order granted to guard against the unreasonable burden the subpoena places upon The Poultry Federation.

Respectfully submitted,

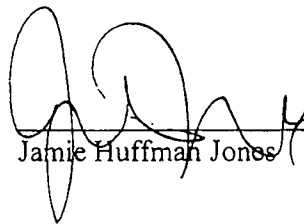
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<sup>3</sup> The Poultry Federation admits that its counsel was sent a list of presumptive categories approximately a week before service.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this, the 31<sup>st</sup> day of March, 2009, I electronically transmitted an electronic copy of the foregoing pleading to the following individuals via email:

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